

**Tuesday, November 15, 2005**

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **SUPERIOR ACCOMPLISHMENT AWARD PRESENTATIONS**

Ramon Hirsig, Executive Director, and Members of the Board presented the 2005-2006 Sustained Superior Accomplishment Awards to employees in recognition of their outstanding achievements.

### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING**

Stephen Osbun, 308369

2001, \$210.00 Claim for Refund

2002, \$312.50 Claim for Refund

2003, \$312.50 Claim for Refund

For Claimant:

Stephen Osbun, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly denied appellant's claims for property tax assistance.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 11.6)

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Lion Clinic, Inc., Danny Quan, Transferee, 289893

1993, \$79,441.03 Assessment

For Appellant:

Joany Yuin, Agent

For Franchise Tax Board:

Dennis J. Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly determined that appellant was liable as transferee for the additional tax and penalties assessed against Lion Clinic, Inc.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Patricia Tyler-Griffis, 281239

1984, \$78,880.00 Assessment

1986, \$788.00 Assessment

1987, \$432.00 Assessment

For Appellant:

William E. Taggart, Jr., Attorney

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, November 15, 2005

Issue: Whether respondent abused its discretion in denying appellant's request for innocent spouse relief.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

### SALES AND USE TAX APPEALS HEARINGS

Mark Andrew Graf, 221081 (UT)

4-22-02, \$2,846.25 Tax

For Petitioner:

Paul Nelson, Representative

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the aircraft was used in commercial flight in interstate commerce such that petitioner is not regarded as having purchased the aircraft for use in California.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Basics Etc. Corporation, 244380 (EH)

7-1-97 to 9-30-01, \$1,175.80 Tax

For Petitioner:

Abe Golomb, Representative

John Kupka, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether petitioner has established that the five remaining contested disallowed sales were valid sales for resale.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Katherine A. Kruss, 212599 (CH)

7-1-98 to 6-28-01, \$61,328.52 Tax, \$3,116.70 Failure to File Penalty

For Petitioner:

Robert L. Goldstein, Attorney

Katherine A. Kruss, Taxpayer

Peggy McCormick, Witness

Sally Erdman, Witness

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is liable for the unpaid tax liability of Sable.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tuesday, November 15, 2005

The Board recessed at 12:00 p.m. and reconvened at 2:40 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Nelson Shane Garrett and Maxim Khokhlov, 235401 (AS)

10-1-99 to 12-31-02, \$1,606,272.19 Tax

For Petitioner:

Robert E. Cendejas, Attorney

Nelson Shane Garrett, Taxpayer

Maxim Khokhlov, Taxpayer

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether sales tax applies to petitioner's gross receipts from its retail sales of flowers and other products, which purchasers ordered through petitioner's Internet website or through petitioner's toll-free telephone number, when the property was shipped from non-California inventory and delivered by out-of-state florists to locations solely outside California.

Action: Mr. Leonard moved that the petition be granted and the issue be referred to the Business Tax Committee. The motion was seconded by Ms. Yee but failed to carry, Mr. Leonard and Ms. Yee voting yes, Mr. Chiang and Ms. Mandel voting no, Mr. Parrish abstaining.

Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

## PUBLIC HEARINGS

### **Proposed Amendments to Sales and Use Tax Regulation 1699, Permits, and Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes**

Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to Sales and Use Tax Regulation 1699, *Permits*, and Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes* (Exhibit 11.7).

Current law provides that a seller's permit shall not be issued to a retailer's place of business where the retailer merely stores tangible personal property and which customers do not customarily visit for the purpose of making purchases, but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale. Regulation 1699, *Permits*, is proposed to be amended to interpret, implement, and make specific Revenue and Taxation Code section 6066. Amendments are proposed to provide that when a retailer negotiates sales out-of-state, but the goods are shipped from a stock of goods owned by the retailer in this state, a permit is required for the location of the stock of goods.

Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 7202. Currently, Regulation 1802 provides that when a retailer has no sales offices in this state but fulfills out-of-state orders from a stock of goods located in this state, the place of sale is the location of the stock of goods. Amendments are

Tuesday, November 15, 2005

proposed to provide that when a retailer negotiates sales out-of-state but the goods are shipped from a stock of goods owned by the retailer in this state, the sales are consummated at the location of the stock of goods and the local tax revenue derived thereby is to be distributed directly to that location whether or not the retailer has registered business locations in this state.

Speakers: Fran Mancina, MBIA MuniServices  
Mark Moses, Director of Administration Services, City of Stockton  
Stephen P. Conway, Director of Finance & Admin Services, Town of Los Gatos  
Albin C. Koch, General Tax Counsel, MBIA MuniServices  
Jean Korinke, Legislative Representative, League of California Cities  
Veronica J. Larsen, Revenue Manager, City of Hayward

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board deferred consideration of this matter to the next Board Meeting to allow the public an opportunity to review staff's alternative language.

### **Proposed Amendments to Cigarette and Tobacco Products Tax Regulations to Conform to New Statues**

Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding Regulation 4055, *Where Purchased; Distributors' Discount*; Regulation 4056, *Units of Sale; Minimum Sales*; Regulation 4057, *Cash Sales of Tax Stamps or Meter Register Settings*; Regulation 4058, *Application for Credit Purchases*; Regulation 4059, *Authorization for Credit Purchases*; Regulation 4060, *Payment for Credit Purchases*; and, Regulation 4061, *Unused Stamps and Unused Meter Settings*. The proposed amendments conform the regulations to Senate Bill (SB) 1701 (Ch. 881, Stats. 2002) and Assembly Bill (AB) 1666 (Ch. 867, Stats. 2003). The bills update the method and manner in which the new cigarette tax stamps are to be purchased, affixed to packages of cigarettes, and cancelled as required by SB 1701 and specify security and reporting requirements for cigarette or tobacco products distributors electing to make payments on a twice-monthly basis as required by AB 1666. (Exhibit 11.8.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the amendments to Cigarette and Tobacco Products Tax Law Regulations 4055, 4056, 4057, 4058, 4059, 4060 and 4061 as published.

### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Nortel Networks, Inc.*, 150425.

**Tuesday, November 15, 2005**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

**Nortel Networks, Inc., 150425 (OHB)**

1-1-94 to 12-31-97, \$1,263,249.32 Tax

Action: The Board deferred consideration of this matter.

**ATS Systems California, Inc., 225017, 255361 (CH)**

4-1-99 to 3-31-02, \$125,493.70 Tax

Action: Redetermine as recommended by the Appeals Division.

**Ardeshir M. Behbahany, 241390, 254661 (GH)**

10-1-99 to 9-30-02, \$00.00 Tax, \$10,199.61 Negligence Penalty, \$10,080.81 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

**Richard Steinbaum, 246689 (FHB)**

1-1-00 to 12-31-02, \$00.00, \$14,795.22 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

**Picomedia, Inc., 265931 (CH)**

1-1-00 to 12-31-00, \$379,884.92 Tax

Action: Redetermine as recommended by the Appeals Division.

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Norma Jean Cattle Company, 303567*; and, *Elizabeth Montes, 224954, and Dennis A. Speldrick, 225542*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

**Darnet Adams, 283986**

2000, \$74.27 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Charles Carney and Jennifer Carney, 289996**

2003, \$1,010.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Patricia J. Ferraro, 299111**

2002, \$1,068.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tuesday, November 15, 2005

Michael James Galotta, 301574

2000, \$2,152.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Norma Jean Cattle Company, 303567

2002, \$100.00 Claim for Refund

Action: The Board deferred consideration of this matter.

John M. Payne, 290261

1998, \$3,865.75 Claim for Refund

1999, \$7,389.75 Claim for Refund

2001, \$597.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Susan L. Rankin, 293470

1991, \$4,149.32 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Loretta Strachowski, 303448

2002, \$2,237.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Darrel Alan Travis, 289912

2002, \$281.00 Tax, \$70.25 Notice and Demand Penalty, \$100.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

James Wambach and Maria Wambach, 289999

2003, \$450.06 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Elizabeth Montes, 224954

Dennis A. Speldrick, 225542

1997, \$1,043.94 Assessment

Action: The Board deferred consideration of this matter.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Walter L. Collins, 306359

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**Tuesday, November 15, 2005**

June Dizon, 295491

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Martin Fahey, 293043

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Nahid Ghodsi, 293052

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Eve Iversen, 298734

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Joseph L. Johnston, 289024

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Tricia Mayfield, 296203

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Virginia P. Palmer, 300360

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Aneska Rasheed, 306996

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Leticia Simmons, 295178

2000, \$347.50

2001, \$347.50

Action: Modify the action of the Franchise Tax Board by reversing respondent's denial of the 2001 claim, but sustaining respondent's denial of the 2000 claim.

C. R. Stuart, 307422

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Lisa Torquato (Deceased), 300804

2004, \$327.50

Action: Sustain the action of the Franchise Tax Board.

Tuesday, November 15, 2005

Sandra Ruth Torres, 309273

2004, \$214.00

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Chevrolet Motor Division, 326337*, the Board made the following orders:

OCE North America, Inc., 265564 (OHA)

10-1-97 to 12-31-02, \$146,560.31

Action: Approve the redetermination as recommended by staff.

Air Liquide America Corporation, 268170 (OHC)

1-1-97 to 3-31-00, \$2,927,746.12

Action: Approve the redetermination as recommended by staff.

Baker Process, Inc., 285900 (OHC)

4-1-99 to 6-30-03, \$1,610,609.72

Action: Approve the redetermination as recommended by staff.

Peak Technologies, Inc., 269582 (OHB)

7-1-00 to 3-31-03, \$287,036.21

Action: Approve the redetermination as recommended by staff.

Kim Kea Ov, 198154 (EA)

2-1-92 to 6-30-96, \$384,563.35

Action: Approve the redetermination as recommended by staff.

Long Khieng Ta, 198153 (EA)

2-1-92 to 6-30-96, \$384,563.35

Action: Approve the redetermination as recommended by staff.

Jian Torkan, 306542 (EH)

7-1-97 to 12-31-99, \$110,324.99

Action: Approve the redetermination as recommended by staff.

Jesse Pinedo, 314405 (FHB)

10-1-99 to 9-30-00, \$70,440.99

Action: Approve the redetermination as recommended by staff.



Tuesday, November 15, 2005

JVC Americas Corporation, 293203 (OHB)

7-1-00 to 6-30-03, \$68,371.55

Action: Approve the redetermination as recommended by staff.

Gosiger West, LLC, 264208 (AS)

3-1-00 to 12-31-02, \$157,345.85

Action: Approve the redetermination as recommended by staff.

VF Imagewear (West), Inc., 307258 (OHB)

1-1-00 to 6-30-03, \$176,388.85

Action: Approve the redetermination as recommended by staff.

Fujitec America, Inc., 327447 (OHA)

1-1-01 to 12-31-02, \$172,021.65

Action: Approve the denial of claim for refund as recommended by staff.

Harold F. Schuetz Enterprises, Inc., 89000366890 (ARH)

1-1-92 to 6-30-95, \$62,433.17

Action: Approve the denial of claim for refund as recommended by staff.

Load King Manufacturing Company, 253678 (OHC)

10-1-00 to 9-30-03, \$81,002.00

Action: Approve the denial of claim for refund as recommended by staff.

Chevrolet Motor Division, 326337 (OHA)

2-17-05 to 5-28-05, \$68,469.53

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Anderson Industrial Scaffolding Service, Inc., 259711 (OHC)

4-1-01 to 12-31-03, \$179,979.27

Action: Approve the denial of claim for refund as recommended by staff.

# **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

The Board deferred consideration of the following matter: *Household Retail Service, Inc., 103973.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Chevrolet Motor Division, 315422*, the Board made the following orders:

Tuesday, November 15, 2005

Sacramento Regional Transit District, 326332 (KH)

7-1-04 to 9-30-04, \$163,805.63

Action: Approve the credit and cancellation as recommended by staff.

TABC, Inc., 307881 (AA)

4-1-04 to 6-30-04, \$510,747.48

Action: Approve the credit and cancellation as recommended by staff.

Jendham, Inc., 325741 (FHB)

4-1-01 to 9-30-03, \$578,047.29

Action: Approve the credit and cancellation as recommended by staff.

QAM, Inc., 265138 (OHB)

4-1-95 to 12-31-02, \$189,322.20

Action: Approve the credit and cancellation as recommended by staff.

Fujitec America, Inc., 250024 (OHA)

1-1-01 to 12-31-02, \$231,285.46

Action: Approve the refund as recommended by staff.

Three D Systems, Inc., 288950 (AR)

4-1-00 to 3-31-03, \$76,082.96

Action: Approve the refund as recommended by staff.

Brown &amp; Sharpe Manufacturing Company, 287645 (OHB)

7-1-96 to 6-30-99, \$76,614.03

Action: Approve the refund as recommended by staff.

Viewsonic Corporation, 300144 (AP)

10-1-00 to 12-31-04, \$614,533.16

Action: Approve the refund as recommended by staff.

Alta Equipment/Land Leasing Company, Inc., 327466 (BH)

4-1-02 to 6-30-02, \$70,471.60

Action: Approve the refund as recommended by staff.

Peterson Tractor Company, 314679 (CH)

1-1-05 to 3-31-05, \$496,446.32

Action: Approve the refund as recommended by staff.

BEI Sensors &amp; Motion Systems Company, Inc., 304481 (AC)

10-1-01 to 12-31-03, \$50,578.16

Action: Approve the refund as recommended by staff.

**Tuesday, November 15, 2005**

Compuware Corporation, 262567 (OHA)

1-1-01 to 9-30-03, \$939,369.36

Action: Approve the refund as recommended by staff.

Datex-Ohmeda, Inc., 313857 (OHA)

1-1-05 to 3-31-05, \$215,268.37

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 315422 (OHA)

2-17-05 to 5-28-05, \$634,851.47

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Household Retail Service, Inc., 103973 (OHA)

10-1-97 to 12-31-02, \$4,605,464.97

Action: The Board deferred consideration of this matter.

Mercedes-Benz USA, LLC, 314036 (KH)

6-23-05 to 7-5-05, \$213,396.00

Action: Approve the refund as recommended by staff.

Anderson Video Company, 327459 (AC)

9-29-97 to 12-31-00, \$63,670.26

Action: Approve the refund as recommended by staff.

Lantern Communications, Inc., 245039 (GH)

7-1-00 to 5-28-04, \$83,129.81

Action: Approve the refund as recommended by staff.

Opvista, Inc., 258690 (EAA)

10-1-00 to 6-30-03, \$102,278.96

Action: Approve the refund as recommended by staff.

The Creative Works, 244817 (EAA)

7-1-00 to 12-31-03, \$242,365.94

Action: Approve the refund as recommended by staff.

PDG Hightower, Inc., 315666 (FHB)

4-1-05 to 6-30-05, \$57,241.08

Action: Approve the refund as recommended by staff.

Callaway Golf Sales Company, 318511 (FHB)

7-1-01 to 6-30-04, \$60,386.51

Action: Approve the refund as recommended by staff.

Tuesday, November 15, 2005

Capgemini Technologies, LLC, 289304 (OHA)

10-1-02 to 3-31-03, \$81,057.43

Action: Approve the refund as recommended by staff.

BioMarin Pharmaceutical, Inc., 261308 (JH)

10-1-00 to 12-31-03, \$214,978.46

Action: Approve the refund as recommended by staff.

Cureline, Inc., 305388 (BH)

10-1-03 to 3-31-05, \$71,377.40

Action: Approve the refund as recommended by staff.

Heritage Community Credit Union, 315363 (KH)

1-1-05 to 3-31-05, \$56,632.71

Action: Approve the refund as recommended by staff.

Frank Guidace, 326338 (GH)

1-1-02 to 12-31-04, \$112,524.44

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT**

With respect to the Special Taxes Matters, Redeterminations, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Fontana Center Trust, 311589 (MT)

1-1-99 to 10-5-03, \$71,249.58

Action: Redetermine as recommended by staff.

**PROPERTY TAXES MATTERS, CONSENT**

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

**Petitions for Reassessment of Unitary Value**

Southern California Water Company (101), 315703

2005, \$445,400,000.00 Unitary Value

Action: Reduce the 2005 unitary value to \$434,600,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Tuesday, November 15, 2005**

Pacific Pipeline System, LLC (486), 316491

2005, \$202,600,000.00 Unitary Value

Action: Reduce the 2005 unitary value to \$186,000,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

### **Petitions for Penalty Abatement on Unitary Value**

Allstate Communications, Inc. (8022), 314764

2005, \$66,600.00 Penalty

Action: Approve the penalty abatement on 2005 unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Blue Casa Communications, Inc. (8027), 314766

2005, \$11,400.00 Penalty

Action: Approve the penalty abatement on 2005 unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

### **LEGAL APPEALS PROPERTY TAX MATTERS, CONSENT**

With respect to the Legal Appeals Property Tax Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

### **Petitions for Reassessment of Unitary Value**

Qwest Communications Corporation (2463), 316106

2005, \$141,000,000.00 Unitary Value

Action: Deny the 2005 unitary value as recommended by the Appeals Division.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Level 3 Communications, LLC (7761), 315515

2005, \$329,600,000.00 Unitary Value

Action: Reduce the 2005 unitary value to \$315,600,000.00 as recommended by the Appeals Division. Ms. Mandel not participating in accordance with Government Code section 7.9.

### **Petition for Reassessment and Penalty Abatement on Unitary Value**

BT Americas, Inc. (7758), 315653

2005, \$9,960,000.00 Unitary Value, \$996,000.00 Penalty

Action: Increase the 2005 unitary value to \$12,900,000.00, deny the penalty abatement on 2005 unitary value, and increase the penalty to \$1,290,000.00 as recommended by the Appeals Division. Ms. Mandel not participating in accordance with Government Code section 7.9.

Tuesday, November 15, 2005

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

Robert E. Wesley, 262544

2001, \$4,425.00 Assessment, \$1,106.25 Late Filing Penalty

Jerry J. Couchman, 281854

2001, \$3,393.00 Assessment, \$848.75 Late Filing Penalty, \$848.25 Notice and Demand Penalty

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the formal opinion.

**SALES AND USE TAX MATTERS, CREDITS AND CANCELLATIONS,  
ADJUDICATORY**

Heang Yu Heng Jewelry, Inc., 325852 (AA)

2-1-92 to 6-30-96, \$541,440.01

Considered by the Board: June 29, 2000

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board approved the credit and cancellation as recommended by staff.

**SPECIAL TAXES MATTERS, DENIAL OF CLAIM FOR REFUND, ADJUDICATORY**

Ultramar, Inc., 281957 (MT)

5-1-94 to 12-31-01, \$822,738.90

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the denial of claim for refund as recommended by staff.

**CHIEF COUNSEL MATTERS****OTHER CHIEF COUNSEL MATTERS**

Kristine Cazadd, Chief Counsel, Legal Department, provided an update on the limited peace officer status and a summary of the Investigations Division's manual update (Exhibit 11.9).

**Tuesday, November 15, 2005**

## **ADMINISTRATIVE SESSION**

### **ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Approve the backfill determination of \$20.3 million for fiscal year 2004-05 for the effects of Proposition 10 on cigarette and tobacco products consumption as recommended by staff (Exhibit 11.10).

Action: Approve the 2006 Timberland Production Zone Values as recommended by staff (Exhibit 11.11).

Action: Approve the January 2006 Assessors' Handbook Section 531, *Residential Building Costs*, for publication (Exhibit 11.12).

### **BOARD COMMITTEE REPORTS**

#### **Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 11.13).

#### **Business Taxes Committee**

Action: The Board took no action.

#### **Property Tax Committee**

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee, Mr. Parrish and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved the Property Tax Committee report (Exhibit 11.14).

### **OTHER ADMINISTRATIVE MATTERS**

#### **Executive Director's Report**

Ramon Hirsig, Executive Director, introduced Karen Johnson, Deputy Director, Administration Department, who reported on the strategic plan (Exhibit 11.15) and succession planning (Exhibit 11.16).

Mr. Hirsig introduced Jerri Dale, Chief, Customer and Taxpayer Services Division, who provided an update regarding electronic services (Exhibit 11.17).

Tuesday, November 15, 2005

Mr. Hirsig introduced David Gau, Deputy Director, Property and Special Taxes Department, who provided an update regarding the cigarette tax stamp (Exhibit 11.18).

Speakers: Russell La Coste, SICPA Product Security  
Tim Arends, Business Unit Manager, Meyercord Revenue  
Ted Machado, Administrative Assistant, California Distributors Association

Mr. Hirsig introduced Todd Gillman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, who provided an update regarding the pro bono legal assistance program (Exhibit 11.19).

#### **FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING HELD NOVEMBER 15, 2005**

Stephen Osbun, 308369

Final Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board reversed the action of the Franchise Tax Board as to the years 2002 and 2003. The Board took no action as to the year 2001.

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Bipin R. Patel and Anita B. Patel, 287996

1994, \$967.00 Assessment

For Appellant:

Appearance Waived

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether or not the notice of proposed assessment is barred by the statute of limitations.

Whether or not the Franchise Tax Board abused its discretion in determining that appellant was not entitled to abatement of accrued interest under Revenue and Taxation Code section 19104.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board sustained the action of the Franchise Tax Board.

#### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD NOVEMBER 15, 2005**

Lion Clinic, Inc., Danny Quan, Transferee, 289893

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.



**Tuesday, November 15, 2005**

Patricia Tyler-Griffis, 281239

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
NOVEMBER 15, 2005**

Mark Andrew Graf, 221081 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Basics Etc. Corporation, 244380 (EH)

Final Action: Mr. Parrish moved to remove from the measure the small pack of batteries, small bottle of liquid car wash and small car wash mitt, otherwise redetermine as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Katherine A. Kruss, 212599 (CH)

Final Action: Mr. Parrish moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division and that collection of the liability from petitioner be deferred for up to one year to provide the Sales and Use Tax Department time to consider pursuing other persons who may also be responsible for the liability of Sable Technologies.

Nelson Shane Garrett and Maxim Khokhlov, 235401 (AS)

Final Action: The Board deferred consideration of this matter to the January 2006 Board Meeting.

**PROPERTY TAXES HEARINGS**

Broadwing Communications, LLC (7630), 314492

2005, \$6,720,000.00 Unitary Value, \$672,000.00 Incomplete Filing Penalty

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Dana Flanagan-McBeth, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the penalty for filing an incomplete property statement should be abated or reduced.

Tuesday, November 15, 2005

Whether the Board-adopted 2005 unitary value should be increased to include the value of the omitted seven parcels of land.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2005 unitary value be increased to \$7,030,000.00 and the penalty be increased to \$703,000.00 as recommended by staff.

**Alpine PCS, Inc. (2746), 316099**

2005, \$2,090,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Mariam Baxley, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Board-adopted unitary value based on the Replacement Cost New Less Depreciation value indicator adequately recognizes extraordinary obsolescence and excludes the value of exempt software.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2005 unitary value be reduced to \$1,263,000.00 as recommended by staff.

**ICG Communications, Inc., (2462), 316493, 318404**

2005, \$13,000,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Sophia Chung, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether or not the petitioner has established that the Board-adopted unitary value was in excess of fair market value due to the inclusion of property located outside California.

Whether or not petitioner has established that the Board-adopted unitary value fails to include depreciation that occurred after the impairment write-down of June 30, 2004.

Whether or not petitioner has established that the Board-adopted unitary value was in excess of fair market value due to the inclusion of sold or terminated right-of-ways.

Whether or not petitioner has established that the Board-adopted unitary value inappropriately allocates all the fiber optic cable property to Yuba County and whether such allocation fails to include Construction Work in Progress.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2005 unitary value be reduced to \$6,560,000.00 and reallocated the reduced value to the appropriate counties as recommended by staff.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 4:15 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

**Tuesday, November 15, 2005**

**CLOSED SESSION**

The Board met to discuss settlements (R&T Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 4:20 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

The Board adjourned at 4:25 p.m.

*The foregoing minutes are adopted by the Board on February 1, 2006.*

Note: The following cases were removed from the calendar prior to the meeting: *Harinder S. Brar, 303956*; and, *Chris T. Attkisson and Loretta P. Attkisson, 235821 (KHO)*.

**Tuesday, November 15, 2005**